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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/736,190	12/15/2000	Cord Wohltmann	31653-167278 RK	8459

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EXAMINER

CHOI, STEPHEN

ART UNIT	PAPER NUMBER
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3724

DATE MAILED: 12/04/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/736,190

Applicant(s)

WOHLTMANN, CORD

Examiner

Stephen Choi

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 September 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) 1-9 and 11 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 10,12-18 and 26-28 is/are rejected.
- 7) ☒ Claim(s) 19-25 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 December 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2. 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of Group III, claims 12-28 in Paper No. 5 is acknowledged.

Specification

2. The incorporation of essential material in the specification by reference to a foreign application or patent, or to a publication is improper. Applicant is required to amend the disclosure to include the material incorporated by reference. The amendment must be accompanied by an affidavit or declaration executed by the applicant, or a practitioner representing the applicant, stating that the amendatory material consists of the same material incorporated by reference in the referencing application. See *In re Hawkins*, 486 F.2d 569, 179 USPQ 157 (CCPA 1973); *In re Hawkins*, 486 F.2d 579, 179 USPQ 163 (CCPA 1973); and *In re Hawkins*, 486 F.2d 577, 179 USPQ 167 (CCPA 1973).
3. The disclosure is objected to because of the following informalities: page 19, line 25, "8" should be --9--, page 20, line 16, "cuters" should be -cutters--, line 24, "33" should be --28--.

Appropriate correction is required.
4. The abstract of the disclosure is objected to because it appears to exceed 150 words. Correction is required. See MPEP § 608.01(b).
5. Applicant is reminded of the proper language and format for an abstract of the disclosure.

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The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 10, 12-13, 16, and 26-28 are rejected under 35 U.S.C. 102(b) as being anticipated by Dyett (US 5,816,261).

Dyett discloses all the positively recited elements of the invention including:

- a) an unbalanced drive including an output member (Figure 1) rotatable about a first axis (34);
- b) a mobile ledger being reciprocable back and forth in and counter to a predetermined direction and receiving motion from the output member (22);
- c) means for compensating for the lack of balance of the drive including a first counterpoise arranged to orbit about the first axis (30A) and a second

counterpoise (col. 2, lines 21-22) arranged to orbit about a second axis (36) being spaced apart from the first axis;

d) a crank mechanism (30) having a crank arm including a first portion and a second portion (10);

e) a shaft rotatable about the second axis and mounting the second counterpoise and means for rotating the shaft in synchronism with the output member (Figure 1).

With respect to claim 10, Applicant should note that the limitation “means for compensating” is not in compliance with the Supplemental Guidelines published in the Official Gazette on July 25, 2000. The “means for” must not be modified by sufficient structure for achieving the specified function. Such limitations cannot be used to invoke 35 USC 112, 6th paragraph, and have therefore been given their broadest reasonable interpretation, without considering equivalence. With respect to claims 26-28, centers of gravity of the first and second counterpoises are disposed in a substantially vertical common plane. It is noted that any two points of the counterpoises can be disposed in a common plane.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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9. Claims 10 and 12-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Niemann (US 5,050,471) in view of Dyett (US 5,816,261).

Niemann discloses the invention substantially as claimed except for means for compensating including a first counterpoise arranged to orbit about the first axis and a second counterpoise arranged to orbit about a second axis being spaced apart from the first axis. Dyett discloses means for compensating including a first counterpoise arranged to orbit about the first axis (30A) and a second counterpoise (col. 2, lines 21-22) arranged to orbit about a second axis (36) being spaced apart from the first axis. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ means for compensating as taught by Dyett on the device of Niemann in order to compensate the lack of balance of the drive to prevent excessive vibrations of the apparatus.

10. Claims 17-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dyett (US 5,816,261) in view of Trofimov et al. (US 3,915,041).

Dyett discloses the invention substantially as claimed except for an endless flexible torque transmitting element comprising a V-belt. Trofimov discloses a V-belt (42). It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ an endless flexible torque transmitting element comprising a V-belt as taught by Trofimov on the device of Dyett in order to provide means for transmitting torque from the output member to the second counterpoise such that both rotate in synchronism.

Allowable Subject Matter

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11. Claims 19-25 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

12. The following is a statement of reasons for the indication of allowable subject matter: the limitation reciting an output member and a second counterpoise rotating in an opposite direction as set forth in claim 19 in combination with the limitations set forth in claims 10 and 16 and at least one further counterpoise and means for orbiting the further counterpoise in synchronism with one of the first and second counterpoises as set forth in claims 20-25 in combination with the limitations set forth in claim 10 are not anticipated or made obvious by the cited prior art in the Examiner's opinion. For example, the modified device of Dyett discloses means for compensating including counterpoises wherein the V-belt torque transmitting element rotates the second counterpoise in synchronism with the output member. However, the modified device of Dyett does not show the output member and the second counterpoise rotating in an opposite direction as set forth in claim 19 in combination with the limitations set forth in claims 10 and 16. Furthermore, the modified device of Dyett does not show at least one further counterpoise and means for orbiting the further counterpoise in synchronism with one of the first and second counterpoises as set forth in claims 20-25 in combination with the limitations set forth in claim 10.

Conclusion

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13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Rundell, Rowlands et al., Borzym, Preston, Labee et al., Cristiani, Ringe, Seragnoli, Schumacher and Biondi et al. are cited to show related devices.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to S. Choi whose telephone number is 703-306-4523. The examiner can normally be reached on Monday thru Friday between 9am and 5pm. If attempts to reach the examiner are unsuccessful, the examiner's supervisor, Allan Shoap can be reached on 703-308-1082.

In lieu of mailing, it is encouraged that all formal responses be faxed to 703-872-9302. Any inquiry of a general nature or relating to the status of this application should be directed to the receptionist whose telephone number is 703-308-1148.

SC
December 2, 2002



Stephen Choi

Patent Examiner